In the High Court of Judicature at Madras

Dated: 07/02/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No.2023 of 2003
and
WPMP.No.2530 of 2003

Nagarajan .. Petitioner

-Vs-

1. The State of Tamil Nadu rep. by
its Secretary to Government
Home Department, Fort St. George
Chennai 600 009.

2. The Additional Director General of
Prison, No.1 Gandhi Irvin Road
Egmore, Chennai 600 008.

3. The Superintendent
Central Prison
Tiruchirappalli. .. Respondents

For petitioner : Mr. G. Devadoss

For respondents: Mr. I. Subramaniam
Public Prosecutor
Assisted by Mr.R.Chandrasekar
Government Advocate

:ORDER

The petitioner, a member of Marumalarchi Dravida Munnetra Kazhagam (in short "MDMK") and detained in Central Prison, Tiruchirappalli under Section 13 (1) (a) of the Unlawful Activities (Prevention) Act, 19 67, Section 21 (2) & (3) of the Prevention of Terrorism Act, 2002 and Sections 109 and 120 (B) of Indian Penal Code, has filed the above writ petition to issue a writ of mandamus directing the respondents to transfer him from Central Prison, Tiruchirappalli to Central Prison, Madurai forthwith.

2. The case of the petitioner is briefly stated hereunder:
According to him, he is a member of MDMK and his party, namely MDMK had decided to conduct a public meeting to celebrate party's 9th year anniversary and propagate the policy and achievements of the party and to

invite the party functionaries to participate in the said public meeting. The public meeting was held on 29.06.2002 at Thirumangalam, Madurai District. Based on the complaint of one Thangavel, Inspector of Police, Thirumangalam, the Deputy Superintendent of Police, Thirumangalam registered a case against the petitioner and eight others including Thiru Vaiko under Section 13 (1) (a) of the Unlawful Activities (Prevention) Act, 1967, Section 21 (2) & (3) of the Prevention of Terrorism Act, 2002 and Sections 109 and 120 (B) of Indian Penal Code. The petitioner was arrested on 09.07.2002 along with others and produced before the learned Judicial Magistrate, Thirumangalam. The learned Judicial Magistrate, Thirumangalam remanded all of them under judicial custody till 07.08.2002. After remand, they were all taken to Central Prison, Madurai. Though all were arrested in the same crime number and remanded by the same Judicial Magistrate at Thirumangalam, Madurai District, A. Ganesamoorthy and Pullover Sivanthiappan were lodged in the Central Prison, Madurai, Vera. Ilavarasan and M. Bominathan were taken to Central Prison, Salem, P.S. Manian, Alagusundaram, Madurai Ganesan and the petitioner were taken to Central Prison, Tiruchirappalli. Thereafter, the petitioner was produced before the Special Court for trial under the Prevention of Terrorism Act, 200 2 Chennai at Ponamallee on 07.08.2002. His remand was extended further from time to time. The petitioner is a permanent resident of Thirumangalam and all of his family members and friends are residing in and around Thirumangalam. His mother, aged about 72 years was suffering from Bone Cancer. She is unable to visit him, he applied to the Director General of Prisons, Chennai to transfer him from Tiruchirappalli Prison to Madurai Prison, so that his mother can visit him. The said request was sent through the Superintendent of Central Prison, Tiruchirappalli, but the second respondent did not consider the same favourably and he was orally informed by the Superintendent of Central Prison, Tiruchirappalli that his request has been turned down. In such a circumstance, having no other remedy, filed this writ petition invoking the jurisdiction under Article 226 of the Constitution of India.

3. Pursuant to the direction of this Court, the learned Public Prosecutor received instructions from the Additional Director General of Prisons, Chennai 8 - second respondent herein. According to the second respondent, the petitioner and seven others concerned in Thirumangalam Town Police Station Crime No.280/02 under Section 13 (1) (A) Unlawful Activities (Prevention) Act, 1967, Section 21 (2) and (3) of POTA and Sections 109 and 120 (B) of Indian Penal Code were remanded to judicial custody by the Judicial Magistrate, Thirumangalam on 09.07 .2002 and they were admitted in Central Prison, Madurai on the same day. The Superintendent, Central Prison, Madurai in his telex message dated 10.07.2002, reported to the Additional Director General of Prisons, Chennai that only one high security block is provided for the accommodation of Muslim Fundamentalist prisoners, that 35 Muslim Fundamentalist prisoners were confined in his prison and the present population had considerably increased over the authorised accommodation and that much difficulties will be experienced for the segregation of POTA remand prisoners, who were admitted on 09.07.2002 and also convenient separate accommodation was also not available in his prison. Therefore, he requested to transfer six POTA remand prisoners to some other Central Prison on administrative reasons. After examining the request of the Superintendent,

Central Prison, Madurai and the accommodation as well as the present strength and in exercise of the powers conferred under Rule 820 of the Tamil Nadu Prison Manual, Volume II, six persons were ordered to be transferred to the Prisons mentioned against each for administrative and security reasons vide Additional Director General of Prisons telex message dated 10.07.2002. In accordance with the said order, the petitioner was transferred to Central Prison, Trichy along with other remand prisoner P.S. Manian @ Subramaniam, while four other remand prisoners were transferred to other prisons. Regarding the representation made by the petitioner, it is stated that the representation was duly examined with reference to the circumstances under which he was transferred from Central Prison, Madurai to Central Prison, Trichy and it was rejected by the Additional Director General of Prisons by memo dated 10.12.2002, since the situation prevailing in Central Prison, Madurai at the time of his transfer to Central Prison, Trichy has remained the same. Due to the continued detention of the prisoner in prison as a remand prisoner, as per the order of Court, he cannot be physically present by the side of his mother, who is stated to be bed ridden and is undergoing treatment. His relatives and friends have been allowed to meet him in the prison on 57 occasions from 12.07.2002 to 22.01.2003. The Hon'ble Central Minister Thiru Kannappan and Thiru Gingee Ramachandran have also interviewed him on various dates during this period. So, it is clear that he was not denied any reasonable facility for interview. Since the petitioner belonged to a political party, the prison administration had a responsibility to keep him safely and securely without risk to his life from any source. There are no justifiable reasons to accept the case of the petitioner to transfer him to Central Prison, Madurai.

4. Heard, Mr. P. Subbaraj, learned counsel for the petitioner and Mr. I. Subramaniam, learned Public Prosecutor for the respondents.

5. The only point for consideration in this writ petition is, whether the petitioner is entitled transfer from Central Prison, Tiruchirappalli to Central Prison, Madurai, as claimed by him?

6. There is no dispute that the petitioner and others belonging to MDMK party were arrested under various provisions of Unlawful Activities (Prevention) Act, 1967, POTA and Indian Penal Code and a case has been registered by the Deputy Superintendent of Police, Thirumangalam. It is also true that the learned Judicial Magistrate, Thirumangalam remanded all of them under judicial custody and they were taken to Central Prison, Madurai. It is the case of the petitioner that since he is a permanent resident of Thirumangalam and all his family members, relatives and friends are residing in and around Thirumangalam, Madurai District and also of the fact that his mother, who is aged about 72 years suffering from Bone Cancer is unable to visit him. For transfer from Central Prison, Tiruchirappali, initially, he approached the Additional Director General of Prisons, Chennai for transferring him to Central Prison, Madurai and of the fact that the second respondent did not consider his request favourably, has filed the present writ petition.

7. The learned counsel appearing for the petitioner by drawing my attention to the Tamil Nadu Prison Rules as well as the decisions of the Supreme Court would contend that inasmuch as the petitioner being a permanent resident of Thirumangalam, Madurai District, the Central Prison, Madurai is nearest to his permanent residence, the action of the respondents, transferring him to Central Prison, Tiruchirappalli amounts to unreasonable restriction and violative of Article 21 of the Constitution of India. There is no dispute that the petitioner, who is only a remand prisoner has to be imprisoned nearer to his ordinary place of residence. It is also not disputed that the Central Prison at Madurai is nearest prison.

8. On the other hand, learned Public Prosecutor, by drawing my attention to the relevant provisions from the Tamil Nadu Prison Manual and the Classification of Prisons pointed out various Prisons available in our State, the details of prisoners for consideration of this Court. There is no dispute that though the petitioner was arrested on the basis of the complaint of the Deputy Superintendent of Police, Thirumangalam and a case has been registered against him only by the Thirumangalam Police, the nearest prison for him is the Central Prison, Madurai. The learned Public Prosecutor has also brought to my notice the Lock-up Report as on 27.01.2003, which contain the name of Prison, authorised accommodation, number of convicts, remand prisoners, under trials, TPDA, persons arrested for agitation and others. On instructions, he further submitted that the authorised accommodation of Central Prison, Madurai is 1252. But, 2314 prisoners, nearly two times of the authorised accommodation were lodged in Central Prison, Madurai on 10.07.2002. This included 35 Muslim fundamentalist prisoners, who had to be guarded under tight security.

9. It is also brought to my notice that only one high security block is provided in Central Prison, Madurai, wherein Muslim fundamentalist prisoners were confined. In such a circumstance, considering the safety and security, without risk to the petitioner's life from any source, the petitioner being an active member of a political party (MDMK), the Additional Director General of Prisons, Chennai in his proceedings dated 10.07.2002, passed an order transferring certain persons arrested under POTA to various prisons. Pursuant to the communication of the second respondent dated 10.07.2002, the petitioner - Nagarajan and one P.S. Manian @ Subramaniam were transferred to Central Prison, Tiruchirappalli, Madurai P. Ganesan, Alagu Sundaram were transferred to Central Prison, Cuddalore, Elavarasan and Boominathan were transferred to Central Prison Salem. There is no dispute that Rule 820 of the Tamil Nadu Prison Manual, Volume II enables the prison authorities to transfer the prisoners to various prisons, taking note of safety and security to the life of the prisoners. In such a circumstance and in view of the explanation offered by the Additional Director

General of Prisons, Chennai, I am of the view that the request of the petitioner cannot be accepted, more particularly, taking note of safety and security of his own life from the other co-prisoners.

10. Justifying the action of the respondents, particularly

the second respondent, learned Public Prosecutor has relied on the decision of the Apex Court in the case of Davind Patrick Ward vs. Union of India reported in 1992 Supreme Court Cases (Criminal) 814. In that case, the petitioners therein were kept in Naini Jail at Allahabad. It was requested that they may be shifted to Tihar Jail at Delhi. In support of their claim, after referring Article 36 of Vienna Convention on Consular Relations, it is stated that it may be easy for the officers of the British High Commission in New Delhi to visit the petitioners and arrange for their legal representation if they are put in Tihar Jail at Delhi. Rejecting the said contention, learned Supreme Court has held,

"27. ..... In our considered opinion, that alone cannot be the criterion, if consideration of security comes to the fore. In the counter affidavits filed on behalf of the respondents, it is made clear that the security considerations have made the authorities concerned to take the view that keeping of the petitioners in Naini Jail at Allahabad would be most appropriate. .... "
It is further held that,

"28. When the authorities have come forward to afford all facilities to the officers of the British High Commission who desire to visit the petitioners in Naini Jail at Allahabad, it cannot be said that they are acting contrary to the view expressed by this Court in A.K. Roy as top need of affording facilities to those who desire to meet detenues in jail. However, we are not to be understood as saying that the Court is powerless to examine the conditions of preventive detention under Section 5 where a case warrants such examination. But in this case, having regard to its facts and a conscious decision taken by the respondents, from the point of view of security, to detain the petitioners in Naini Jail at Allahabad, we do not think we could concede to their request to shift them to Tihar Jail at Delhi, more so, when the counter affidavit indicates that whenever visits are desired by officers of British High Commission, proper arrangements will be made in that behalf. "

With the said observation, the Supreme Court has dismissed the writ petitions filed by the detenus.

11. It is also useful to refer the earlier decision of the Supreme Court in the case of A.K. Roy vs. Union of India reported in 1982 Supreme Court Cases (Criminal) 152. While confining the detenus in different places, the provisions of preventive detention and personal liberty under Article 21 of the Constitution of India, their Lordships have concluded,

"73. ..... It is neither fair no just that a detenu should have to suffer detention in "such place" as the Government may specify. The normal rule has to be that the detenu will be kept in detention in a place which is within the environs of his or her ordinary place of residence. If a person ordinarily resides in Delhi, to keep him in detention in a far off place like Madras or Calcutta is a punitive measure by itself which, in matters of preventive detention at any rate, is not to be encouraged. Besides, keeping a person in detention in a place other than the one where he habitually resides makes it

impossible for his friends and relatives to meet him or for the detenu to claim the advantage of facilities like having his own food. The requirements of administrative convenience, safety and security may justify in a given case the transfer of a detenu to a place other than that where he ordinarily resides, but that can only be by way of an exception and not as a matter of general rule. Even when a detenu is required to be kept in or transferred to a place which is other than his usual place of residence, he ought not to be sent to any far off place which, by the very reason of its distance, is likely to deprive him of the facilities to which he is entitled. Whatever smacks of punishment must be scrupulously avoided in matters of preventive detention.
74. Since Section 5 of the Act provides for, as shown by its marginal note, the power to regulate the place and conditions of detention, there is one more observation which we would like to make and which we consider as of great importance in matters of preventive detention. In order that the procedure attendant upon detentions should conform to the mandate of Article 21 in the matter of fairness, justness and reasonableness, we consider it imperative that immediately after a person is take in custody in pursuance of an order of detention, the members of his household, preferably the parent, the child or the spouse, must be informed in writing of the passing of the order of detention and of the fact that the detenu has been taken in custody. Intimation must also be given as to the place of detention, including the place where the detenu is transferred from time to time. This Court has stated time and again that the person who is taken in custody does not forfeit, by reason of his arrest, all and every one of his fundamental rights. It is, therefore, necessary to treat the detenu consistently with human dignity and civilized norms of behaviour. "

12. It is clear from the mandate of the Supreme Court that in order to satisfy "fairness", "justness" and "reasonableness", as provided under Article 21 of the Constitution of India, the detenu / person arrested will be kept in a place, which is within his / her ordinary place of residence. However, as pointed out by their Lordships, due to administrative convenience, safety and security it would be open to the Jail authorities to transfer the detenu / person to a place other than that he ordinarily resides. However, as observed by their Lordships that can only be by way of an exception and not as a matter of general rule. By applying the said principle, since the petitioner hails from Thirumangalam and was arrested by the Thirumangalam Police, normally the place to be detained is Central Prison, Madurai. I have already referred to the factual information furnished by the learned Public Prosecutor, namely more number of persons were put in Central Prison, Madurai, particularly, 35 Muslim fundamentalist prisoners were confined in one high security block for want of further sufficient space etc., It is also seen from the materials placed that the petitioner being an acting member of a political party in this State, considering his safety and security of his life from any source, the decision of the respondents transferring him from Central Prison, Madurai to Central Prison, Tiruchirappalli cannot be faulted with and interfered by this Court. It is also brought to my notice that, apart from 35 Muslim fundamentalist, there were 57 detenus under Goondas Act and prisoners charged under TPDA cadre were also lodged in Central Prison, Madurai. In such a circumstance, as rightly contended by the learned Public Prosecutor, it is the responsibility of the prison authorities to take

sufficient care and steps, considering the safety and security. I am satisfied that the respondents 2 and 3 have not violated the either Prison Rules nor the law laid down in the case of A. K. Roy vs. Union of India (1982 SCC (Crl.) 152).

13. Apart from the above legal and factual details, the learned Public Prosecutor has also stated that the petitioner's relatives and friends have been allowed to meet him in the prison on 57 occasions from 12.07.2202 to 27.01.2003. It is also brought to my notice that Central Minister, namely Mr. Kannappan and Mr. Gingee Ramachandran have also interviewed him on various dates during this period. It is clear that the petitioner was not denied any facility for interview and the contrary allegation made in the affidavit is baseless. Further, even if it is accepted that his aged mother is suffering due to Bone cancer, being the petitioner remanded to jud icial custody and facing trial under POTA, the petitioner cannot be allowed to visit his ailing mother, except by a specific order of a Court. Further, when she is immobilised, she may not be in a position to visit the petitioner wherever he is detained. Inasmuch as his request for transfer to Central Prison, Madurai is not based on valid reasons, especially his friends and relatives visited him in Central Prison, Tiruchirappalli on many occasions and in the light of the information furnished relating to Central Prison, Madurai and taking note of safety and security of the petitioner, I am of the view that no mandamus can be issued to the respondents, as the petitioner has not made out a case to transfer him from Central Prison, Tiruchirappalli to Central Prison, Madurai. Accordingly, the writ petition fails and the same is dismissed. No costs. Consequently, connected WPMP., is also dismissed.
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Index:yes

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To

1. The Secretary to Government
State of Tamil Nadu
Home Department, Fort St. George
Chennai 600 009.

2. The Additional Director General of
Prison, No.1 Gandhi Irvin Road
Egmore, Chennai 600 008.

3. The Superintendent
Central Prison
Tiruchirappalli.